IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL REVISION APPLICATION No 230 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE J.R.VORA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

TEJPRAKASH OMPRAKASH SONI

Versus

RAJKANVARI NANDLAL SONI

Appearance:

MR DF AMIN for Petitioner

MR MJ BUDDHBHATTI for Respondent No. 1

MR BY MANKAD, APP for Respondent No. 2

CORAM : MR.JUSTICE J.R.VORA

Date of decision: 09/10/2001

ORAL JUDGEMENT

1. This Revision Application is filed by husband being aggrieved and dissatisfied by the order passed by Family Court Judge in Criminal Case No. 3661 of 2000

filed by the present respondent wife against the present petitioner under Section 125 of the Cri. Procedure Code and vide order impugned, which is dated 29th March, 2001, learned Family Court Judge was pleased to grant maintenance to the present respondent to the tune of Rs. 500/- per month.

2. As per the brief facts of the case, present respondent No.1 married to the present petitioner on 13th February, 1996 at Bikaner. After some time, the marriage life was disturbed, and according to wife she was driven away from the house of her in-laws and she took resort at Ahmedabad at parental home. After considering the income of the husband and the allegation from the husband that wife also is earning, learned Family Court Judge has come to the conclusion that the wife was entitled to maintenance and learned Family Court Judge decided the quantum at Rs. 500/-per month. Husband also had filed a suit at Bikaner for the restitution of conjugal rights wherein the wife on claiming, was ordered to pay maintenance of Rs. 400/- per month. This order of the learned Family Judge dated 29th March, 2001 is the subject matter of challenge in this Revision Application.

3. Learned Advocate Mr.D.F. Amin for the applicant, learned Advocate Mr. J.M.Buddhbhatti for respondent No.1 and learned APP Mr. B.Y.Mankad for respondent No.2 State of Gujarat were heard.

4. Learned Advocate Mr. D.F. Amin contended that in fact the learned Family Court Judge granted maintenance of Rs.900/- which is not permissible. It was contended that the wife was getting maintenance in the suit filed by the husband at the tune of Rs. 400/- per month and the learned Family Court Judge granted maintenance under these proceedings to the tune of Rs. 500/- per month, which in its effect comes to Rs. 900/per month. The learned Family Court Judge under Section 125 of the Cri. Procedure Code is not empowered to grant maintenance for more than Rs.500/- and wife was getting maintenance already from the husband to the tune of Rs.400/- per month as directed by the Civil Court in a suit filed by the husband for restitution of conjugal rights. Learned Advocate Mr. D.F.Amin has placed reliance on the decision of this Court in the matter of SUNDERLAL TRIBHOVANDAS vs. PADMABEN SUNDERLAL, reported in 1985 GLH 879, wherein it is held that granting maintenance in a Civil Court is not itself a bar for granting maintenance under Section 125 of the Criminal Procedure Code, but it is clear that when Criminal Court or Civil Court awarding the maintenance then it shall

take into consideration the order passed by the other court awarding the maintenance and make suitable adjustments in the circumstances of the case. It was urged, therefore, by learned Advocate Mr. Amin that the learned Family Court Judge failed to make adjustments in view of the fact that the wife was already getting maintenance to the tune of Rs. 400/-. Learned Family Court Judge failed to take into consideration this fact in its true perspective as decided by this Court in the above said decision. It was urged that the wife is not entitled to two sets of maintenance, one under civil remedy and the other under Section 125 of the Cri. Procedure Code. Therefore, it is urged that the order granting maintenance by the Family Court to the wife to the extent of Rs. 500/- per month is bad in law and is required to be set aside. This is the only contention raised on behalf of the applicant.

5. On the other hand, learned Advocate Mr. J.M. Buddhbhatti has contended that the learned Family Court Judge has already taken into consideration the fact that the wife was getting the maintenance under the Civil Court. Learned Advocate MR. Buddhbhatti has relied upon a decision of this Court in the matter of DR. RAMESHCHANDRA vs. DHIRAJGAVRI, reported in 1982 (2) GLR 359, wherein it has been held that a party may have various alternative remedies to get the desired relief, and if such alternative remedies are pursued simultaneously, it cannot be said that by itself, the said action would amount to abuse of the process of the court. It was further held that the scope of proceedings under Section 24 of the Hindu Marriage Act is entirely different from the scope of proceeding under Section 125 of the Criminal Procedure Code and, therefore, the parties can resort the desired remedy. The Court further held that in such circumstances, the court granting maintenance must take into consideration the amount of maintenance fixed by the either Court. Therefore, the learned Advocate Mr. Buddhbhatti contended that after taking into consideration the amount fixed by the Civil Court, the order which is impugned in this Revision is passed by the Family Court Judge, which is not at all erroneous or require any interference in the revisional jurisdiction.

6. Having heard the learned counsel of both the parties and having perused the record of the case, so far as the legal position is concerned, the law is also settled that the remedy under Section 125 of the Criminal Procedure Code and the remedy under the Civil

Jurisdiction are altogether different. One is not barred for the other. What is required is the court granting maintenance must take into consideration the amount of maintenance which might have been granted by the other Court. Meaning thereby that while fixing the quantum of the maintenance, the Court must take into consideration the amount of maintenance granted by any other Civil or Criminal Courts. In the circumstances of each case, as per the established law, this amount is required to be adjusted. The remedies under Section 125 of the Criminal Procedure Code and under the Hindu Marriage Act are separate remedies and can be claimed simultaneously. Only while granting the maintenance by a Civil or Criminal Court, the amount of maintenance if granted by either of the Courts, will be taken into consideration and adjusted. This Court cannot agree with the argument advanced by Mr. D.F. Amin that the Family Court Judge has not taken into consideration the maintenance granted by the Civil Court. It is clear from the order that the learned Family Court Judge has discussed the issue and has observed that the Civil Court has granted maintenance to the tune of Rs. 400/- per month to the wife. After taking this fact into consideration, the Family Court Judge has granted the maintenance to the tune of Rs. 500/- per month in the scope of Section 125 of the Criminal Procedure Code, it cannot be said that the Family Court Judge has granted two sets of maintenance. The granting of maintenance under the Hindu Marriage Act depends upon altogether different principles. One of them would be the status of the family in which the wife was legally wedded. While the principles granting maintenance under Section 125 of the Criminal Procedure code is to prevent starvation amongst the wife and children. It cannot be said that the Family Court Judge has granted the maintenance of Rs. 900/- but from the bare reading of the decision of the Family Court Judge it is abundantly clear that after taking into consideration the fact that though the wife was getting maintenance at the tune of Rs. 400/- per month by the order of the Civil Court, in the facts and circumstances of this case, the wife was entitled to maintenance of Rs.500/- per month and, therefore, by no stretch of reasoning, the order passed by the Family Court Judge which is impugned can be said to be erroneous or require any interference because after due adjustments of the maintenance granted by the Civil Court, after taking the fact into consideration, the learned Family Court Judge granted the maintenance of Rs. 500/- per month in Criminal procedure in the facts and circumstance of the case. Therefore, the decision of this Court in the matter of Sunderlal Tribhovandas vs.Padmaben Sunderlal (supra) cited by the

learned Advocate Mr. D.F. Amin would not be useful to him. The learned Family Court Judge has observed the principle laid down by this Court.

7. In this view of the matter, this Revision Application fails and stands dismissed. Rule i discharged.

(J.R. Vora, J.)

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